TONY NARA & ORS v. PP

HIGH COURT SABAH & SARAWAK, SIBU
WONG SIONG TUNG J
[CRIMINAL REVISION NO: SBW-43-1-6-2025]
11 SEPTEMBER 2025

Abstract – *In the absence of an order made by the Yang di-Pertuan Agong under s. 59(1) of the Subordinate Courts Act 1948 assigning local limits, a Sessions Court in Sarawak has jurisdiction to hear any matter arising anywhere within the territorial jurisdiction of the High Court in Sabah and Sarawak. Accordingly, an offence committed in one administrative division, may be tried by a Sessions Court sitting in another division, provided both fall within the same High Court jurisdiction.*

CRIMINAL PROCEDURE: *Revision – Application for – Applicants convicted and sentenced to offence under s. 90(1) of Forests Ordinance, 2015 (Sarawak) (Cap 71) read together with s. 34 of Penal Code by Sessions Court at Mukah – Applicants claimed case ought to have been heard by Sessions Court at Sibu – Whether Sessions Court at Mukah had jurisdiction to try case alleged to have occurred within jurisdiction of Sibu Division – Whether application for revision ought to be allowed – Criminal Procedure Code, s. 323 – Subordinate Courts Act 1948, s. 59(1) & (2)*

CRIMINAL PROCEDURE: *Charge – Defective charge – Applicants convicted and sentenced to offence under s. 90(1) of Forests Ordinance, 2015 (Sarawak) (Cap 71) read together with s. 34 of Penal Code by Sessions Court at Mukah – Charge stated 'Selangau District' belonged to 'Mukah Division' instead of 'Sibu Division' – Whether charge defective – Whether invalidated proceedings in Sessions Court – Whether applicants proved miscarriage of justice had been occasioned – Criminal Procedure Code, ss. 156 & 419*

Due to the collection of 101 pieces of timber logs of various sizes and species, with a total volume of 34.3833m³ ('subject matter'), without a valid licence, the applicants were charged before the Sessions Court at Mukah under s. 90(1) of the Forests Ordinance, 2015 (Sarawak) (Cap 71) ('Ordinance'), read together with s. 34 of the Penal Code ('charge'). After the charge was read and explained to the applicants, they pleaded guilty. Consequently, each applicant was sentenced to a fine of RM30,000, in default six months' imprisonment, together with a sentence of three months' imprisonment. The applicants were also ordered to pay RM252,889.20 to the Sarawak State Government. Further, the Sessions Court issued forfeiture orders in respect of the subject matter and the machinery used ('Sessions Court decision'). Aggrieved by the Sessions Court decision, the applicants

filed the present application for revision under s. 323 of the Criminal Procedure Code ('CPC') ('revision application'). In support of that application, the applicants contended that: (i) the Sessions Court at Mukah had no territorial jurisdiction to hear the case, as the proper *locus* lay within the Sibu Division; (ii) the charge was defective due to the misdescription of the relevant District or Division; (iii) the investigation against the applicants was incomplete or did not disclose the commission of any criminal offence; (iv) the applicants were denied their right to legal representation; and (v) the applicants' pleas of guilty were equivocal, as during mitigation they had stated that they were 'merely workers' operating on native customary land pursuant to an agreement with the landholder. In resisting the revision application, the prosecution contended that: (i) the Sessions Court at Mukah did have territorial jurisdiction to hear the case because, pursuant to s. 59(2) of the Subordinate Courts Act 1948 (as extended to Sabah and Sarawak) ('SCA'), a Sessions Court in Sabah and Sarawak has jurisdiction to hear matters arising anywhere within the local jurisdiction of its High Court, unless specific local limits have been assigned; (ii) under s. 419 of the CPC, a conviction cannot be set aside solely on the ground of an error as to venue unless such error has occasioned a failure of justice; (iii) the charge had been properly read and explained to the applicants, and they had been given the opportunity to obtain legal representation, which they voluntarily declined; and (iv) the applicants' assertion that they were 'merely workers' amounted only to a plea for leniency and did not render their pleas of guilty equivocal.

Held (dismissing revision application; affirming Sessions Court decision):

(1) For Sessions Courts in Sabah and Sarawak, no order had been made by the Yang di-Pertuan Agong under s. 59(1) of the SCA assigning local limits to their jurisdiction. Accordingly, under s. 59(2) of the SCA, as modified and read together with the Subordinate Courts Act (Extension) Order 1982, a Sessions Court in Sarawak has jurisdiction to hear any matter arising anywhere within the territorial jurisdiction of the High Court in Sabah and Sarawak. Whether the offence occurred in the Sibu Division or the Mukah Division was therefore immaterial. Both divisions fell within the jurisdiction of the High Court in Sabah and Sarawak, and within the administrative registry of the High Court at Sibu, under which the Sessions Courts at Mukah and Sibu operated. (paras 30-32)

(2) The Sessions Court at Mukah sat as a circuit court and was presided over by the same Sessions Court Judge ('SJ') who also sat in Sibu. It would have been an absurdity to hold that the same SJ, when sitting in the Sibu Division, could lose jurisdiction over an offence committed in the Mukah Division, or *vice versa*, given that both divisions were within the same territorial jurisdiction of the High Court of Sabah and Sarawak at

Sibu. Since the offence was committed within the territorial jurisdiction of the High Court in Sabah and Sarawak, with its branch at Sibu, the Sessions Court – whether sitting in the Sibu or Mukah Division in circuit – had jurisdiction to try and determine the present case. (paras 33-35)

(3) The charge set out the essential elements, namely the offence alleged, the statutory provisions invoked, the date and time, and the subject matter. The charge expressly identified the location of the offence as 'Batu 36, Jalan Sibu/Setapang' and 'in the District of Selangau'. The sole error lay in wrongly stating that the Selangau District belonged to the 'Mukah Division' instead of the 'Sibu Division'. Neither the applicants nor their counsel alleged that they had been misled, nor did they demonstrate how this mistaken reference to the division could have influenced their decision or induced them to plead guilty. Considering s. 156 of the CPC, which makes it clear that an error or omission in a charge does not invalidate proceedings unless it is shown that the accused was misled to their prejudice, the applicants' allegation of a miscarriage of justice was without basis. (paras 44-47 & 49)

(4) Section 90(3) of the Ordinance expressly places the burden on the accused to prove lawful authority or possession of a licence. On the record, the applicants never asserted that they held a licence, nor did they produce one. The applicants' plea in mitigation, that they were 'merely workers', even if accepted at face value, did not amount to or suggest 'lawful authority' under s. 90(3) of the Ordinance. Nor did it negate their admission of the essential elements of the offence, namely that they had collected the forest produce without a licence. Confining to the examination of the record, nothing disclosed that 'no offence' could be made out. The applicants therefore failed on this ground. (paras 53, 55-56 & 59)

(5) The SJ had expressly asked the applicants whether they understood their right to counsel, to which all three answered 'Yes'. The SJ then directly asked whether they wished to engage counsel, and each applicant answered 'No'. The charges, rights, nature, and consequences had been explained, and each applicant confirmed their understanding. The proceedings were conducted in Bahasa Malaysia, the language chosen by the applicants themselves. When the case was called again on a later date, the applicants appeared unrepresented and confirmed that they understood the nature and consequences of their guilty pleas. They maintained those pleas and raised no objection or request for counsel. Accordingly, there was no denial of legal representation in the present case, but rather a conscious and informed waiver of that right by the applicants. (paras 62-65)

(6) The applicants' remark that they were 'only the worker at the said place' did not amount to a denial of the charge, but rather constituted a request for leniency based on their role. At no stage did the applicants dispute their involvement or challenge the elements of the offence or the facts as read to them. Under s. 90(1) of the Ordinance, the status of being a 'worker' does not negate the *actus reus* of 'collecting forest produce', nor does it, without more, discharge the statutory burden under s. 90(3) to prove lawful authority or possession of a licence. In view of this, and given that the charge, as well as the nature and consequences of a guilty plea, had been explained to the applicants and that they maintained their pleas thereafter, it was held that the pleas were unequivocal and were properly accepted by the Sessions Court at Mukah. (paras 69, 70 & 72)

Case(s) referred to:

Abdul Azeez Abdul Rahim v. PP [2022] CLJU 1955; [2022] 1 LNS 1995 CA ***(refd)***
Ahmad Zubair Hj Murshid v. PP [2014] 1 CLJ 697 CA ***(refd)***
Emperor v. Nasrullah & Others AIR 1928 All 287 ***(refd)***
Hap Seng Plantations (River Estates) Sdn Bhd v. Excess Interpoint Sdn Bhd & Anor [2016] 4 CLJ 641 FC ***(refd)***
Hussin Sillit v. PP [1988] 2 CLJ 9; [1988] 1 CLJ (Rep) 128 SC ***(refd)***
Koh Thian Huat v. PP [2002] 3 SLR 28 ***(refd)***
Knight Glenn Jeyasingam v. PP [1999] 3 SLR 363 ***(refd)***
Liaw Kwai Wah & Anor v. PP [1987] 1 CLJ 35; [1987] CLJ (Rep) 163 SC ***(refd)***
Mohd Tamrin Abdul Ghafar lwn. PP [2022] CLJU 1933; [2022] 1 LNS 1933 HC ***(refd)***
Muhamad Nuzul Ikhram Nurallail & Ors v. PP [2018] 3 AMR 182 ***(refd)***
Munandu Sangaran v. PP [1984] 2 CLJ 50; [1984] 2 CLJ (Rep) 273 HC ***(refd)***
Pie Chin v. PP [1983] 1 CLJ 316; [983] CLJ (Rep) 703 HC ***(refd)***
PP v. Abul Hassan Mohamed Rashid [2022] 9 CLJ 502 CA ***(refd)***
PP v. Cheah Chooi Chuan [1972] CLJU 110; [1972] 1 LNS 110 HC ***(refd)***
PP v. Gulam Rusol Md Ismail & Anor [2021] CLJU 674; [2021] 1 LNS 674 HC ***(refd)***
PP v. Kulasingam [1974] CLJU 118; [1974] 1 LNS 118 HC ***(refd)***
Sova Sdn Bhd v. Kasih Sayang Realty Sdn Bhd [1987] CLJU 55; [1987] 1 LNS 55 HC ***(refd)***
Taman Rimba (Mentakab) Sdn Bhd v. Sin Yew Poh Tractor Works [2002] 2 CLJ 112 HC ***(refd)***
Tan Sri Eric Chia Eng Hock v. PP [2007] 1 CLJ 565 FC ***(refd)***
Tong Ah Leek & Anor v. Hup Seng Hin Machinery Trading Co [1998] 3 CLJ Supp 266 HC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, s. 22
Criminal Procedure Code, ss. 121, 153(1), 156, 323, 419
Forests Ordinance, 2015 (Sarawak) (Cap 71), ss. 40, 54, 55, 79, 90(1), (3), 91(2)
Land Code (Sarawak) (Cap 81), s. 4(3)
Penal Code, s. 34
Subordinate Courts Act 1948, s. 59(1), (2)

Other source(s) referred to:

Srimurugan Alagan, *The Criminal Procedure Code: A Commentary,* 2nd edn, paras. 323-5-323-6

For the applicants/accused - Jacob LN Wong & Jessie Wong Siew Wee; M/s Nawi, Wong & Partners

For the respondent - Mohamad Fuad Ahmad; DPP & Denny Kana Joshua; Forest Department Sarawak

Reported by Syamim Ariffin

JUDGMENT

Wong Siong Tung J:

Introduction

[1] This is an application for revision under s. 323 of the Criminal Procedure Code (CPC) by the three applicants/accused. They were convicted upon their pleas of guilty in the Sessions Court at Mukah on 10 June 2025, in Criminal Case No. MKH-62EG-2-6-2025. The conviction was for an offence under s. 90(1) of the Forests Ordinance, 2015 (Sarawak) (Cap 71), read together with s. 34 of the Penal Code, for unlawfully collecting forest produce.

[2] The charge against the applicants/accused is reproduced as follows:

> Charge:
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> That you, on the 29th day of May 2025 at about 1015 hours, near Batu 36, Jalan Sibu/Setapang in the District of Selangau, Mukah Division in the State of Sarawak, in furtherance of the common intention of all of you, did collect forest produce amounting to wit 101 pieces of timber logs of various sizes and species at total volume of 34.3833m³ without a licence issued to you and you have thereby committed an offence under section 90(1) of the Forests Ordinance, 2015 [Cap.71] and punishable under section 90(1), 90(2) and 79 of the same read with section 34 of the Penal Code.
>
> Hukuman:
>
> Penalty:
>
> A fine of not less than RM25,000 and not exceeding RM150,000 and imprisonment not exceeding five (5) years or to both.
>
> Additional Order:
>
> In addition to the penalty which may be imposed, payment of a sum of not less than ten (10) times the royalty or value of the forest produce to the Government of the State of Sarawak.

[3] Upon conviction, each applicant/accused was fined RM30,000, in default six months' imprisonment, together with three months' imprisonment. Further, under s. 91(2) of the Forests Ordinance, 2015 (Sarawak) (Cap 71), each applicant/accused was also ordered to pay RM252,889.20 to the Sarawak State Government. The Sessions Court also issued forfeiture orders under s. 79 of the Ordinance, covering the seized items, including machinery and the logs.

Submissions Of The Parties In Brief

[4] Learned counsel for the applicants/accused advanced four principal grounds in support of the application for revision as follows:

(i) that the Sessions Court at Mukah lacked territorial jurisdiction because the *locus* falls within Sibu Division;

(ii) that the charge is defective owing to a misdescription of the district/division;

(iii) that the investigation was incomplete or disclosed no criminal act;

(iv) that the applicants/accused were denied their right to legal representation; and

(v) that the pleas of guilty were not unequivocal, as in mitigation the applicants/accused stated they were "merely workers" on native customary land pursuant to an agreement with a landholder.

[5] In response, learned Deputy Public Prosecutor (DPP) for the respondent submitted that, pursuant to s. 59(2) of the Subordinate Courts Act 1948 (as extended to Sabah and Sarawak), a Sessions Court has jurisdiction to hear matters arising anywhere within the local jurisdiction of its High Court, unless specific local limits are assigned. Accordingly, the Sessions Court at Mukah, as a circuit court within the Sibu High Court's jurisdiction, had proper jurisdiction.

[6] The learned DPP for the respondent further submitted that, under s. 419 of the CPC, a conviction cannot be set aside merely on the ground of wrong venue, unless such error has occasioned a failure of justice.

[7] On the conduct of proceedings in the Sessions Court, the learned DPP contended that the charge was read twice, interpreted to the applicants/accused, and that they confirmed their understanding of the charge. They were also offered the opportunity for legal representation, which they declined.

[8] As to the mitigation plea, the learned DPP submitted that the applicants/accused's statement that they were "only workers" amounted to no more than an appeal for leniency, and did not render their pleas of guilty equivocal.

The Principle Of Law For Criminal Revision

[9] Section 323 of the CPC provides that:

> 323 Powers to call for records of subordinate Courts
>
> (1) A Judge may call for and examine the record of any proceeding before any subordinate Criminal Court for the purpose of satisfying himself as to the **correctness, legality or propriety of any finding,** sentence or **order recorded or passed, and as to the regularity of any proceedings** of that subordinate Court.
>
> (2) Orders made under sections 97 and 98 are not proceedings within the meaning of this section. (emphasis added)

[10] Paragraph 1700 of *Mallal's Criminal Procedure,* 8th edn, states:

> … The object of this revisional legislation is to confer upon the High Court a kind of paternal or supervisory jurisdiction in order to correct miscarriage of justice arising from misconception in law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment, which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand in some undeserved hardship to individuals …

See also: *Emperor v. Nasrullah & Others* AIR 1928 All 287; *Liaw Kwai Wah & Anor v. PP* [1987] 1 CLJ 35; [1987] CLJ (Rep) 163; [1987] 2 MLJ 69; *Tan Sri Eric Chia Eng Hock v. PP* [2007] 1 CLJ 565; [2007] 2 MLJ 101; and *PP v. Kulasingam* [1974] CLJU 118; [1974] 1 LNS 118; [1974] 2 MLJ 26.

[11] A revision cannot be equated with an appeal. In a revision, this court is confined to the materials found in the record of proceedings to determine the "correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings" and determine whether there is any miscarriage of justice to an applicant.

See: *Muhamad Nuzul Ikhram Nurallail & Ors v. PP* [2018] 3 AMR 182; *Koh Thian Huat v. PP* [2002] 3 SLR 28 and *Knight Glenn Jeyasingam v. PP* [1999] 3 SLR 363. See also: *The Criminal Procedure Code: A Commentary* – 2nd edn, by paras. 323-5 to 323-6 of Srimurugan Alagan.

Issues

[12] The issues that arise for determination are:

(i) whether the Sessions Court at Mukah lacked jurisdiction to try the charge;

(ii) whether the charge was defective;

(iii) whether the investigation was incomplete or disclosed no criminal act;

(iv) whether there was a denial of the applicants' right to legal representation; and

(v) whether the pleas of guilty of the applicants/accused persons were unequivocal and valid in law.

Analysis

Jurisdiction Of The Sessions Court At Mukah

[13] In his submission, learned counsel for the applicants/accused relied on s. 121 of the CPC, which provides that, ordinarily, every offence must be tried by a court within the local limits of the jurisdiction where it was committed.

[14] Counsel further referred to s. 59(1) of the Subordinate Courts Act 1948 ("SCA"), which empowers the Yang di-Pertuan Agong to establish Sessions Courts and to assign to them local limits of jurisdiction.

[15] It was contended that the alleged offence occurred at Lot 469, Block 18, Spapa Land District, which lies within the Sibu Division. In support, counsel relied on a notification issued by the Director of Lands and Surveys under s. 4(3) of the Land Code (Sarawak) (Cap 81), published in the Sarawak Government *Gazette* (Swk. L.N. 294).

[16] That notification listed various parcels of land in Spapa Land District as in Sibu Division declared as native area land. It is to be noted that Lot 469, Block 18, Spapa Land District was not included.

[17] On this basis, counsel contended that Spapa Land District falls under Sibu Division and therefore the Sessions Court at Mukah had no jurisdiction. He submitted that, therefore the guilty pleas, convictions and sentences entered by the Sessions Court at Mukah against applicants/accused were null and void.

[18] Counsel cited several authorities on Sessions Court jurisdiction, including *PP v. Abul Hassan Mohamed Rashid* [2022] 9 CLJ 502, *Mohd Tamrin Abdul Ghafar lwn. PP* [2022] CLJU 1933; [2022] 1 LNS 1933, *Abdul Azeez Abdul Rahim v. PP* [2022] CLJU 1995; [2022] 1 LNS 1995, *PP v. Gulam Rusol Md Ismail & Anor* [2021] CLJU 674; [2021] 1 LNS 674, and *Taman Rimba (Mentakab) Sdn Bhd v. Sin Yew Poh Tractor Works* [2002] 2 CLJ 112.

[19] However, all these cases concern the jurisdiction of Sessions Courts in Peninsular Malaysia, and do not directly govern the position of the Sessions Court in Sabah and Sarawak.

[20] While it may be true that the land in question lies within Sibu Division for administrative and land registration purposes under the Land Code (Cap 81), this does not determine the jurisdiction of the courts.

[21] The constitution and territorial jurisdiction of Sessions Courts is set out in s. 59 of the Subordinate Courts Act 1948, which was extended to Sabah and Sarawak on 1 June 1982 by the Subordinate Courts Act (Extension) Order 1980 (PU(A) 357/1980) with modifications.

[22] Counsel for the applicants/accused in his submission, referred to s. 59(1) of the Subordinate Courts Act 1948, but omitted reference to s. 59(2) of the same Act and the Subordinate Courts Act (Extension) Order 1980 (PU(A) 357/80), which are crucial in determining the position of the Sessions Court in Sabah and Sarawak.

[23] The s. 59 of the Subordinate Courts 1948 provides as follows:

> 59 Constitution and territorial jurisdiction of Sessions Courts
>
> (1) The Yang di-Pertuan Agong may, by order, constitute so many Sessions Courts as he may think fit and shall have power, if he thinks fit, to assign local limits of Jurisdiction thereto.
>
> (2) *Subject to this Act or any other written law, a Sessions Court shall have jurisdiction to hear and determine any civil or criminal cause or matter arising within the local limits of jurisdiction assigned to it under this section, or, if no such local limits have been assigned, arising in any part of Peninsular Malaysia.*
>
> (3) Each Sessions Court shall be presided over by a Sessions Court Judge appointed by the Yang di-Pertuan Agong on the recommendation of the Chief Judge.
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> [(3) Am. Act A887: s. 4]
>
> (4) Sessions Courts shall ordinarily be held at such places is the Chief Judge may direct, but should necessity arise they may also be held at any other place within the limits of their Jurisdiction.
>
> [59. Am. Act A671: s. 2, (4) Am. Act A887: s. 4]
>
> *Note - For application in Sabah and Sarawak - see PU(A) 357/1980.*
>
> (emphasis added)

[24] By virtue of the Subordinate Courts Act (Extension) Order 1980, the words "arising in any part of West Malaysia (Peninsular Malaysia)" in s. 59(2) are replaced with "arising in any part of the local jurisdiction of the respective High Court".

[25] Hence, for application in the States of Sabah and Sarawak, s. 59(2) of the Subordinate Courts Act 1948 reads with Subordinate Courts Act (Extension) Order 1980 (PU(A) 357/80), provides that:

> (2) Subject to this Act or any other written law, a Sessions Court shall have jurisdiction to hear and determine any civil or criminal cause or matter arising within the local limits of jurisdiction assigned to it under this section, or, if no such local limits have been assigned, **arising in any part of the local jurisdiction of the respective High Court.**
>
> (emphasis added)

[26] The Subordinate Courts Act (Extension) Order 1980 (PU(A) 357/80) also defines "local jurisdiction of the High Court" to mean:

> (a) in the case of the High Court in Malaya the territory comprised in the Federal Territory and the States of Malaya, namely, Johore, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Terengganu; and
>
> (b) in the case of the High Court in Borneo, **the territory comprised in the Borneo States, namely, Sabah and Sarawak.** (emphasis added)

[27] Malaysia therefore has two High Courts, namely the High Court of Malaya and the High Court in Sabah and Sarawak. The High Court at Sibu, Sarawak is a branch of the High Court in Sabah and Sarawak.

See: *Sova Sdn Bhd v. Kasih Sayang Realty Sdn Bhd* [1987] CLJU 55; [1987] 1 LNS 55; [1988] 2 MLJ 268 and *Hap Seng Plantations (River Estates) Sdn Bhd v. Excess Interpoint Sdn Bhd & Anor* [2016] 4 CLJ 641; [2016] 3 MLJ 553.

[28] As to the territorial jurisdiction of the two High Courts in Malaysia on criminal matters, s. 22 of the Courts of Judicature Act 1964 so far as relevant provides:

> 22 Criminal Jurisdiction
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> (1) The High Court shall have jurisdiction to try -
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> (a) **all offences committed** -
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> (i) **within its local jurisdiction**;
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> (ii) on the high seas on board any ship or on any aircraft registered in Malaysia;
>
> (iii) by any citizen or any permanent resident on the high seas on board any ship or on any aircraft;
>
> (iv) by any person on the high seas where the offence is piracy by the law of nations; and
>
> (2) … (emphasis added)

[29] Each High Court has criminal jurisdiction over all offences committed within its respective territorial limits.

[30] For Sessions Courts in Sabah and Sarawak, no order has been made by the Yang di-Pertuan Agong under s. 59(1) of the Subordinate Courts Act 1948 assigning local limits of their jurisdiction.

[31] Therefore, it follows that, under s. 59(2) of the Subordinate Courts Act 1948 as modified and reads with Subordinate Courts Act (Extension) Order 1980 (P.U. (A) 357/80), a Sessions Court in Sarawak has jurisdiction to hear any matter arising anywhere within the territorial jurisdiction of the High Court in Sabah and Sarawak. *See: Tong Ah Leek & Anor v. Hup Seng Hin Machinery Trading Co* [1998] 3 CLJ Supp 266.

[32] Accordingly, whether the offence occurred in Sibu Division or Mukah Division is immaterial. Both divisions fall within the jurisdiction of the High Court in Sabah and Sarawak, and within the administrative registry of the High Court at Sibu, under which the Sessions Courts at Mukah and Sibu operate.

[33] The Sessions Court in Mukah also sits as a circuit court and is presided over by the same Sessions Court Judge who also sits in Sibu.

[34] It would be an absurdity to hold that the same Sessions Court Judge, when sitting in Sibu Division, could lose jurisdiction over an offence committed in Mukah Division, or *vice versa*, given both divisions being within the same territorial jurisdiction of the High Court of Sabah and Sarawak at Sibu.

[35] Accordingly, since the offence was committed within the territorial jurisdiction of the High Court in Sabah and Sarawak with its branch at Sibu, the Sessions Court, whether sitting in Sibu Division or in Mukah Division in circuit, had jurisdiction to try and determine the matter.

[36] In any event, s. 419 of the CPC stipulates that a conviction shall not be set aside merely because the proceedings took place in a wrong local area or before a "wrong" court, unless the error occasioned a failure of justice.

[37] The applicants/accused have not claimed that they were prejudiced, nor has counsel demonstrated how any prejudice could have arisen. In any case, no basis has been shown as to how prejudice could have arisen, particularly when the same Sessions Court judge would have presided over the matter whether sitting in Mukah Division or in Sibu Division, and the proceedings were case-managed within the circuit calendar.

Alleged Defective Charge

[38] The applicants/accused's counsel pointed out an error in the charge, which stated that the offence was committed "near Batu 36, Jalan Sibu/Setapang in the District of Selangau, Mukah Division". In truth, the District of Selangau falls within the Sibu Division, not Mukah Division.

[39] Based on this mistake, counsel argued that the charge was defective, as it failed to comply with s. 153(1) of the CPC, which requires a charge to contain sufficient particulars of time, place, and persons or things involved, in order to reasonably inform the accused of the case they must answer.

[40] On that basis, learned counsel for the applicants/accused contended that the applicants/accused had pleaded guilty to a defective charge, amounting to a serious miscarriage of justice.

[41] However, the charge did in fact set out the essential elements: the offence alleged, the statutory provisions invoked, the date and time, the place described ("near Batu 36, Jalan Sibu/Setapang"), and the subject matter (101 logs, measuring 34.3833 m^3).

[42] The mistaken description of Selangau District as being in "Mukah Division" instead of "Sibu Division" may have created an administrative inaccuracy, but it did not obscure the nature or location of the offence charged. The applicants were adequately informed of the nature of the case they had to meet.

[43] Section 156 of the CPC provides that:

> 156 Effect of errors
>
> No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars shall be regarded, at any stage of the case, as material **unless the accused was in fact misled by that error or omission.** (emphasis added)

[44] This provision makes clear that an error or omission in a charge does not invalidate proceedings unless it is shown that the accused was actually misled in a way that caused prejudice to their defence.

See: *Ahmad Zubair Hj Murshid v. PP* [2014] 1 CLJ 697; [2013] 6 AMR 622; *Hussin Sillit v. PP* [1988] 2 CLJ 9; [1988] 1 CLJ (Rep) 128; [1988] 2 MLJ 232; and *Pie Chin v. PP* [1983] 1 CLJ 316; [1983] CLJ (Rep) 703; [1985] 1 MLJ 235.

[45] In the present case, the charge expressly identified the location of the offence as "Batu 36, Jalan Sibu/Setapang" and "in the District of Selangau".

[46] The sole error lay in wrongly stating that Selangau District belonged to "Mukah Division" instead of the correct "Sibu Division".

[47] Apart from the bare contention of miscarriage of justice, neither the applicants/accused nor their counsel alleged being misled, nor demonstrated how this mistaken divisional reference could have influenced their decision or induced them to plead guilty.

[48] On the facts, there is no basis to conclude that the applicants/accused were prejudiced or that any miscarriage of justice occurred.

[49] A bare assertion of miscarriage of justice by learned counsel is insufficient, as it is for the court to determine that ultimate issue. No material facts have been presented to support the contention, and the court therefore finds that the allegation of miscarriage of justice is without basis.

Incomplete Investigation And No Criminal Act

[50] Learned counsel for the applicants/accused submitted that the applicants/accused were "merely workers", engaged by an employer under an agreement with a native customary rights (NCR) landholder of Lot 469, Block 18, Spapa Land District. It was contended that the investigation was incomplete, as the employer and/or landholder were not fully investigated or called for interview.

[51] Counsel further contended that the *locus* in question, that is, Lot 469, Block 18, Spapa Land District was NCR land. However, based on the Sarawak Government *Gazette* Notification produced by counsel himself, the lot was not included among the NCR parcels. At most, it appears to be State land.

[52] As a matter of substantive law, s. 90(1) of the Forests Ordinance, 2015 (Sarawak) (Cap 71) makes it an offence for any person to collect forest produce without a licence issued under ss. 40, 54, or 55. The section is reproduced for clarity:

> Penalty for illegal collection of forest produce
>
> 90(1) *Whoever collects forest produce in permanent forests, State land or alienated land without a licence issued to him under sections 40, 54 or 55, shall be guilty of an offence* and shall, upon conviction, be punished with a fine of not less than twenty-five thousand ringgit and not exceeding one hundred and fifty thousand ringgit, and imprisonment for a term not exceeding five years.
>
> (2) When a person is convicted of an offence under this section, the court shall, in addition to any penalty which it may impose, order such person to pay to the Government a sum of not less than ten times the value (as assessed by the Director or any forest officer authorized by him) of such forest produce in respect of which such offence has been committed, and any sum ordered to be so paid shall be recoverable by the Government as a civil debt.
>
> (3) In any prosecution under this section, *the onus of proving lawful authority or the possession of a licence shall be upon the accused.* (emphasis added)

[53] Section 90(3) of the Forests Ordinance, 2015 (Sarawak) (Cap 71) expressly places the burden on the accused to prove lawful authority or possession of a licence.

[54] The court accepts learned DPP's submission that a licence is required even for collection on alienated land, all the more so where the land is State land or part of a permanent forest reserve.

[55] On the record before the Sessions Court, the applicants never asserted that they held a licence, nor did they produce one.

[56] Their plea in mitigation that they were "only workers", even if accepted at face value, does not amount to or even suggest "lawful authority" under s. 90(3) of the Forests Ordinance, 2015 (Sarawak) (Cap 71). Nor does it negate their admission of the essential elements of the offence, namely, that they collected forest produce (101 timber logs of various sizes and species, with a total volume of 34.3833m^3) and without a licence.

[57] Whether any principal allegedly employed the applicants/accused, purported to hold authority or licence is beside the point unless the applicant/accused can bring themselves within the statutory exception.

[58] The materials advanced (agreement/statutory declaration) by the submission of learned counsel for the applicants/accused were not before the Sessions Court Judge at the time of plea. In any case, those documents do not amount to, nor do they suggest, a licence issued under the Forests Ordinance, 2015 (Sarawak) (Cap 71).

[59] Confining to examination of the record, nothing discloses that "no offence" could be made out. The appellants/accused therefore fail on this ground.

Alleged Denial Of Legal Representation

[60] Learned counsel for the appellants/accused submitted that all the three applicants/accused were unrepresented and the record also shows that they were never being asked whether they have any intention to engage legal representative and that they were not told about their right to legal representation.

[61] The court finds the submission is not supported by the record and has no merit.

[62] The record by the notes of proceeding before the Sessions Court shows that on 4 June 2025, the Sessions Court sitting in Mukah expressly asked the applicants/accused whether they understood their right to counsel, to which all three answered "Yes". The Sessions Court then directly asked whether they wished to engage counsel, and each applicant/accused answered "No".

[63] The proceedings were conducted in Bahasa Malaysia, the language chosen by the applicants/accused. The charges, rights, nature, and consequences were explained, and each applicant/accused confirmed their understanding.

[64] When the case was called again on 10 June 2025 before the Sessions Court sitting in Mukah, the applicants/accused appeared unrepresented, confirmed that they understood the nature and consequences of their guilty pleas, maintained those pleas, and raised no objection or request for counsel.

[65] It is therefore clear from the record that the appellants/accused were informed of their right, asked directly if they wished to exercise it, and they voluntarily chose not to. There was no denial of legal representation, only a conscious and informed waiver of that right.

Pleas Of Guilty: Whether Unequivocal

[66] Learned counsel for applicants/accused contended that pleas of the applicants/accused were equivocal because they said in mitigation that they were only the workers of the said place.

[67] It is elementary that a plea of guilty must be voluntary, unreserved, unqualified and unequivocal. If the accused advances in mitigation facts which, if true, amount to a defence or cast doubt on an essential element of the offence charged, the plea is not unequivocal and must not be accepted without clarification. See: *PP v. Cheah Chooi Chuan* [1972] CLJU 110; [1972] 1 LNS 110 and *Munandu Sangaran v. PP* [1984] 2 CLJ 50; [1984] 2 CLJ (Rep) 273.

[68] The applicants/accused admitted the charges without denying any elements of the offence as the court has found earlier. Their statements, "I apologise" and prayers for leniency, were plainly pleas in mitigation, not defences.

[69] The remark, "I only the worker at the said place", does not amount to a denial but a request for a lighter sentence based on their role. At no stage did the applicants/accused dispute their involvement or challenge elements of the offence and the facts as read to them.

[70] Under s. 90(1) of the Forests Ordinance, 2015 (Sarawak) (Cap 71), the status of being a "worker" does not negate the *actus reus* of "collecting forest produce", as this court has already reasoned. Nor does it, without more, discharge the statutory burden under s. 90(3) to prove lawful authority or possession of a licence.

[71] As the court has earlier reasoned, the applicants/accused did not assert that they possessed a licence, nor that a licence existed which extended to them. The mitigation, as recorded in the notes of proceedings before the Sessions Court, does not traverse any essential element, it is a plea for mercy based on role and personal circumstances. Thus, on the record, there was no positive assertion by the applicants/accused whether explicitly or by implication, of a legal defence.

[72] The notes of proceedings before the Sessions Court confirm that the charge, and the nature and consequences of a guilty plea, were explained. The applicants maintained their pleas after such explanation. In these circumstances, the pleas were unequivocal and were properly accepted by the Sessions Court.

Conclusion And Orders

[73] In conclusion, having examined and reviewed the record of the proceedings before the Sessions Court sitting in Mukah, together with the parties' submissions, this court is not satisfied and persuaded that any error of law, material irregularity, or miscarriage of justice has been shown.

[74] The complaints as to jurisdiction and venue of the Sessions Court are without foundation and, in any event, disclose no prejudice. The charge adequately informed the applicants/accused of the case they had to meet.

A The contention of "incomplete investigation/no offence" is inconsistent with the structure of s. 90(1) and (3) of the Forest Ordinance, 2015 (Sarawak) (Cap 71). The record of proceeding in the Sessions Court further shows no denial of representation, and the pleas of guilty, taken after explanation, were unreserved, unqualified, and unequivocal.

B **[75]** Accordingly, the application by the applicants/accused for criminal revision is dismissed. The convictions, sentences and forfeiture orders of the Sessions Court at Mukah made on 10 June 2025 are affirmed.

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